

## REMARKS/ARGUMENTS

In the Office Action mailed April 16, 2009, claims 1-21 were rejected. In response, Applicants hereby request reconsideration of the application in view of the below-provided remarks. No claims are amended, added, or canceled.

### Claim Rejections under 35 U.S.C. 103

Claims 1-5, 10, 14, 15, 18, and 19 were rejected under 35 U.S.C. 103(a) as being unpatentable over Yerbury et al. (U.S. Pat. No. 5,134,277, hereinafter Yerbury) in view of Kulha et al. (U.S. Pat. No. 5,973,611, hereinafter Kulha). Additionally, claims 6-8, 11-13, 16, 17, 20, and 21 were rejected under 35 U.S.C. 103(a) as being unpatentable over Yerbury and Kulha and further in view of Macfarlane (U.S. Pat. Pub. No. 2003/0231550, hereinafter Macfarlane). Additionally, claim 9 was rejected under 35 U.S.C. 103(a) as being unpatentable over Yerbury and Kulha and further in view of Wallace (U.S. Pat. No. 5,684,337, hereinafter Wallace). However, Applicants respectfully submit that these claims are patentable over Yerbury, Kulha, Macfarlane, and Wallace for the reasons provided below.

### Independent Claim 1

The Office Action asserts that Yerbury teaches the limitations of claim 1. However, the Office Action recognizes that Yerbury does not teach a passive transponder system. Hence, the Office Action relies on Kulha in combination with Yerbury as purportedly teaching the limitation of the claim. However, Applicants submit that the combination of Kulha with Yerbury is improper for the reasons stated below.

#### 1. The Proposed Combination of Yerbury and Kulha is Improper.

Even if the combination of Yerbury and Kulha were to teach all of the limitations of the claim, the proposed combination of Yerbury and Kulha is nevertheless improper. In asserting a combination of references as a basis for an obviousness rejection, the proposed combination or modification cannot change the principle of operation of the prior art. MPEP 2143.01(VI). In addition, the combination of references cannot render

the prior art unsatisfactory for its intended purpose. MPEP 2143.01(V). Here, the combination of teachings proposed in the Office Action would i) change the principle of operation of Yerbury and would ii) render the device of Yerbury unsatisfactory for its intended purpose.

i. The Proposed Combination would Change the Principle of Operation of the Prior Art.

The proposed combination of Yerbury and Kulha would change the principle of operation of Yerbury because the devices of Yerbury and Kulha apply different methods of identification. Additionally, by implementing passive RF instead of the light beam taught by Yerbury, the combination does not teach “providing signaling perceptible to a user.” Yerbury teaches an interrogator for use in identifying, for example, transponder tagged livestock. Yerbury teaches that one of the advantages of the device of Yerbury is identification of a target actively acquired at range. Yerbury teaches use of the device in close quarters such as a feedlot or dairy where the distance between the tagged livestock is only approximately one meter. Yerbury, col. 10, lines 20-24. Yerbury, therefore, teaches that the target, in this case, the tagged livestock, be actively selected by the user. Once the target is selected, the interrogator is pointed towards the transponder on the livestock and a trigger located on a hand grip is activated. Upon activation of the trigger, a relatively short burst of light having a short rise time and a relatively high degree of concentration is directed toward the livestock which is to be identified. The transponder receives the signal and transmits data back to the interrogator gun.

However, the Office Action suggests that the interrogator gun of Yerbury be modified with the teachings of Kulha to implement a passive transponder system so that the system is cheaper to produce. Kulha, however, teaches that the activation trigger of the passive system is based on zones. The first zone taught by Kulha is the wake-up zone. The wake-up zone of Kulha is described as a circular zone having a diameter of about one to two feet. Kulha, Fig. 2; Kulha, col. 4, lines 12-19. Kulha teaches that upon detection of the transponder within the wake-up zone, the wake-up sensor causes the microprocessor to wake up to full operation mode. Kulha, col. 4, line 65 to col. 5, line 6. The microprocessor then transmits wake-up and data signals to the second zone taught by

Kulha which is the transmission zone. The transmission zone is described as the zone in which the transponder can manually activate the remote entry system of Kulha. Kulha teaches that the transmission zone is circular in shape and has a diameter of about three to four feet. Kulha, col. 4, lines 24-28. Kulha also teaches that in order to receive the data signals the transponder be within one of the transmission zones. Kulha, col. 4, lines 28-30.

Therefore, combining the teachings of Kulha into the reference of Yerbury would change the principle of operation of Yerbury because the microprocessor of Kulha would eliminate the functionality of the light beam interrogation system taught by Yerbury. Kulha teaches that the microprocessor transmits a wake-up signal followed by a data signal. The transponder reacts by sending identification data. Therefore, if the microprocessor of Kulha is implemented into the device of Yerbury, as suggested by the Office Action, then the light beam emission aspect of the interrogator system of Yerbury would be rendered unnecessary. Furthermore, by replacing the light beam of Yerbury with a passive RF system, as suggested in the Office Action, the proposed combination of references would not teach user perceptible signaling because the microprocessor of Kulha would eliminate the functionality of the light beam taught by Yerbury.

The MPEP states that if the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. MPEP 2143.01(VI). Therefore, Applicants submit that the teachings of the cited references are not sufficient to render the limitations of claim 1 as *prima facie* obvious because the proposed combination would change the principle of operation of Yerbury. Furthermore, the proposed combination would not teach all the limitations of the claim because the proposed combination would not teach signaling perceptible to the user. Accordingly, Applicants respectfully assert claim 1 is patentable over the proposed combination of Yerbury and Kulha.

ii. The Proposed Combination would Render the Prior Art Unsatisfactory for its Intended Purpose.

The proposed combination of Yerbury and Kulha is also improper because the use of wake-up and transmission zones, as taught in Kulha, within the device of Yerbury would render the device of Yerbury unsatisfactory for its intended purpose. Yerbury teaches identification of a target with a corresponding transponder from a distance of up to 30 meters and as much as 200 meters. Yerbury, col. 6, lines 40-46. In particular, Yerbury teaches emitting a small-angle light beam (about 2 degrees angle of emission) to activate the transponder remotely from a range of up to 200 meters. Yerbury also teaches that the interrogator gun of Yerbury operates in all conditions which agricultural animals are farmed including the open range where tagged animals are at varying distances from the interrogator gun across the range as well as confined conditions such as feedlots or dairies where the concentration of animals can be relatively much greater. Yerbury, col. 10, lines 17-24.

Nevertheless, despite the apparent need in Yerbury to identify a specific target within a group of tagged targets both at relatively long range and close quarters with other targets at various orientations around the specific target, the Office Action proposes to incorporate the zone-based passive system of Kulha into Yerbury. This proposition not only severely restricts the device of Yerbury but would appear to prevent the ability of Yerbury to select a specific target from within a group of potential targets. Even if it were possible to extend the zones taught by Kulha to the range suggested by Yerbury, there is no apparent provision to allow the device of Yerbury to identify a specific target within a group where the specific target is not the only tagged target or the nearest tagged target within the detection zone of the interrogator gun.

Therefore, combining the references of Yerbury and Kulha, as proposed in the Office Action, would render the device of Yerbury unsatisfactory for its intended purpose because the ability taught by Yerbury to identify a specific target within a group of tagged targets of varying spacial arrangements would be significantly hindered or destroyed. The proposed combination would also render the device of Yerbury unsatisfactory for its intended purpose because the zones described in Kulha would

prevent the device of Yerbury from identifying targets at the range taught by Yerbury. Accordingly, Applicants respectfully assert independent claim 1 is patentable over the cited references because the proposed combination of references is improper.

#### Independent Claims 14, 15, and 21

Applicant respectfully asserts independent claims 14, 15, and 21 are patentable over the proposed combinations of cited references at least for similar reasons to those stated above in regard to the rejection of independent claim 1. Each of claims 14, 15, and 21 recites subject matter which is similar to the subject matter of claim 1 discussed above. Although the language of these claims differs from the language of claim 1, and the scope of these claims should be interpreted independently of other claims, Applicant respectfully asserts that the remarks provided above in regard to the rejection of claim 1 also apply to the rejection of these claims.

#### Dependent Claims

Claims 2-13 and 16-20 depend from and incorporate all of the limitations of the corresponding independent claims 1, 14, and 15. Applicants respectfully assert claims 2-13 and 16-20 are allowable based on allowable base claims. Additionally, each of claims 2-13 and 16-20 may be allowable for further reasons, as described below.

In regard to claim 5, Applicants respectfully submit that claim 5 is patentable over the combination of Yerbury and Kulha because the combination of cited references does not teach all of the limitations of the claim. Claim 5 recites “wherein the perceptible signaling is emitted from the personal device” (emphasis added). In contrast, the cited portion of Kulha (col. 3, line 53 to col. 4, line 22) merely discloses warning signals such as lights and sound provided to the user. The Office Action appears to ignore the language of claim 1 upon which claim 5 depends. The language of claim 1 clearly states “providing signaling perceptible to a human as part of a communication between the base station and the personal device” (emphasis added). The language of claim 1 clearly establishes that the perceptible signaling occurs as communication between the base station and the personal device, and not between the personal device and a user as taught by Kulha.

In regard to claim 6, Applicants respectfully submit that claim 6 is patentable over the combination of Yerbury, Kulha, and McFarlane because the combination of cited references does not teach all of the limitations of the claim. Claim 6 recites “wherein the base station receives and analyzes at least part of the perceptible signaling” (emphasis added). In contrast, the cited reference of Macfarlane merely discloses receiving a voice command from a user at the personal device and subsequently transmitting a signal along a radio frequency that is not detectible by a human from the personal device to the base station. Macfarlane also teaches receiving the voice commands from the user at the base station, in which case, the perceptible communication is between the user and the base station. The Office Action appears to ignore the language of claim 1 upon which claim 6 ultimately depends. The language of claim 1 clearly states “providing signaling perceptible to a human as part of a communication between the base station and the personal device” (emphasis added). The language of claim 1 clearly establishes that the perceptible signaling occurs as communication between the base station and the personal device, and not between the personal device and a user as taught by Kulha and Macfarlane.

In regard to claim 7, Applicants respectfully submit that claim 7 is patentable over the combination of Yerbury, Kulha, and Macfarlane because the combination of cited references does not teach all of the limitations of the claim. Claim 7 recites “after said part of the perceptible signaling emitted by the personal device has been received by the base station.” In contrast, the cited reference of Macfarlane merely discloses receiving a voice command from a user at the personal device and subsequently transmitting a function message based on a recognition process performed in device memory of the voice command given by the user to the personal device. The function message is transmitted from the personal device to the base station. Macfarlane also teaches receiving the voice commands from the user at the base station, in which case, the perceptible communication is between the user and the base station. Nowhere does Macfarlane teach a perceptible signal as communication between the personal device and the base station. The Office Action appears to ignore the language of claim 1 upon which claim 7 ultimately depends. The language of claim 1 clearly states “providing signaling perceptible to a human as part of a communication between the base station and the

personal device” (emphasis added). The language of claim 1 clearly establishes that the perceptible signaling occurs as communication between the base station and the personal device, and not between the personal device and a user as taught by Kulha and Macfarlane.

### CONCLUSION

Applicants respectfully request reconsideration of the claims in view of the remarks made herein. A notice of allowance is earnestly solicited.

At any time during the pendency of this application, please charge any fees required or credit any over payment to Deposit Account **50-4019** pursuant to 37 C.F.R. 1.25. Additionally, please charge any fees to Deposit Account **50-4019** under 37 C.F.R. 1.16, 1.17, 1.19, 1.20 and 1.21.

Respectfully submitted,

/mark a. wilson/

Date: June 29, 2009

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